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Date: May 24, 2006 Name: Peter Brunovskis, Reg. No. 52,441 Signature: [Signature]

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Ligia A. Rivera et al.

Appln. No.: 10/771,969

Filed: February 4, 2004

For: Roll of Wet Wipes

Attorney Docket No: 659/2240 (K-C No. 14676.18)

Examiner: Alexander S. Thomas

Art Unit: 1772

Mail Stop Appeal Brief-Patents
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TRANSMITTAL

Sir:

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- ☒ Reply Brief
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Fee calculation:

- ☒ No additional fee is required.
☐ Small Entity.
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☐ An additional filing fee has been calculated as shown below:

| | | | | | Small Entity | | | Not a Small Entity | |
|---|----------------------------------|-------|---------------------------------|---------------|--------------|-----------|----|--------------------|-----------|
| | Claims Remaining After Amendment | | Highest No. Previously Paid For | Present Extra | Rate | Add'l Fee | or | Rate | Add'l Fee |
| Total | | Minus | | | x \$25= | | | x \$50= | |
| Indep. | | Minus | | | x 100= | | | x \$200= | |
| First Presentation of Multiple Dep. Claim | | | | | +\$180= | | | +\$360= | |
| | | | | | Total | \$ | | Total | \$ |

Fee payment:

- ☐ Check in the amount of \$_ is enclosed.
☐ Please charge Deposit Account No. 23-1925 in the amount of \$_____. A copy of this Transmittal is enclosed for this purpose.
☐ Payment by credit card in the amount of \$_____ (Form PTO-2038 is attached).
☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

May 24, 2006
Date

Respectfully submitted,

[Signature]
Peter Brunovskis (Reg. No. 52,441)



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on:

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Date of Deposit

Peter Brunovskis, Reg. No. 52,441

Name of applicant, assignee or
Registered Representative

Signature

May 24, 2006

Date of Signature

Case No. 659/2240 (K-C 14676.18)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ligia A. Rivera et al.)
Serial No.: 10/771,969)
Filing Date: February 4, 2004)
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Examiner: Alexander S. Thomas
Group Art Unit No.: 1772

REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Reply Brief is in response to the Examiner's Answer dated April 3, 2006.

I. ARGUMENT

A. Claims 81-87, 111-114, 119 and 120 are not obvious under 35 U.S.C. § 103(a) over applicants' acknowledged state of the art in view of US 5,763,332 to Gordon because Gordon does not provide a motivation to combine

According to the Examiner, Applicants' background discloses the invention substantially as claimed, namely a roll of wet wipes with perforated sheets; and Gordon discloses the desirability of using a sodium chloride containing composition on wet wipes. The Examiner argues that it would have been obvious to apply the wetting solution of Gordon to the wet wipes in the primary reference in order to provide a wet wipe "that has effective cleaning properties."

The primary reference relied upon by the Examiner, *i.e.*, Applicants' acknowledged state of the art described on p. 1, lines 24-28 identifies a conventional example of wet wipes pulled from the center of a hollow coreless roll having perforated sheets. The Examiner does not provide any evidence of enhanced cleaning properties or benefits over that of the prior art. The Examiner has argued the desirability of using sodium chloride containing compositions on wet wipes because their antibacterial properties presumably provide a wet wipe with enhanced cleaning properties. However, nowhere does Gordon or Applicants' acknowledged state of the art teach that Gordon's encapsulating wetting composition provides antibacterial benefits. Gordon teaches the use of sodium chloride to reduce the level of emulsion needed to counteract the level of water absorbed by hydrophilic carriers.

Applicants' claims are directed to a roll of wet wipes. Gordon's teachings are inapplicable to wet wipes. Applicants' acknowledged state of the art does not provide any basis for incorporating Gordon's wetting composition contained in an emulsion encapsulated within a wipe. Obviously, the wipes are wet on account of the claimed wetting composition. One of ordinary skill in the art would readily appreciate the plain meaning of the term "wet wipe" and understand that a wipe

encapsulating a wetting agent does not constitute a roll of wet wipes. The specification provides a collection of application serial numbers disclosing examples of wet wipes. None of the listed application serial numbers describe wipes containing a wetting agent encapsulated within the wipe for the purpose of selectively achieving wetting of the wipe in accordance with the teachings of Gordon.

In addition to the Examiner's arguments concerning a motivation to combine, the Examiner's Answer went on to argue that "by applicants' own admission" the term "wet wipe" is meant to include both wipes that contain a wet composition before use and wipes that become wet during use. In support, the Examiner relies on the following passage in the specification:

Wet wipes can be any wipe, towel, tissue or sheet like product including natural fibers, synthetic fibers, synthetic material and combinations thereof, that is wet or moist or *becomes* wet during use or prior to use. (specification, p. 2, lines 3-7; emphasis)

All along, the Examiner has relied on Applicants' background description of a roll of wet wipes with perforated sheets as a primary reference in conjunction with a secondary reference disclosing a wetting composition to make its case for obviousness. This new interpretation of the prior art reference, presented for the first time in the Examiner's Answer, essentially argues that a "wet wipe" need not be wet to read on Applicants' "roll of wet wipes."

The Examiner's argument is a red herring. The above cited definition does not convey that a wet wipe can be dry. Rather it conveys a range of already wet or moist products or products that eventually becomes wet or moist as a consequence of wetting. The phrase "or becomes" merely emphasizes the point that a wipe is not a wet wipe until it becomes wet.

Substituting Gordon's wetting composition into the wet wipes of Applicants' background section would require extraordinary hindsight without any reasonable benefit of suggestion, since the teachings are mixing apples and oranges. Gordon's wetting composition is applicable to a completely different wetting methodology involving incorporation of an emulsion containing a wetting composition within a wipe for selective wetting at the point of use.

Regarding the size of the roll, the Examiner further asserts that it would have been obvious to adjust the size of the wet wipes to accommodate a particular end use and that it would have been obvious to vary the size of the wipes in a roll, since a change in size is generally recognized as being within the level of ordinary skill in the art (citing *In re Rose*, 105 USPQ 237 (CCPA 1955)). The Examiner has failed to present any evidence or prior art in support of any end use that would necessitate or motivate a skilled artisan to modify a roll of wet wipes according to the present claims, nor any evidence from the prior art that such a claimed size is even feasible for the purpose of dispensing wet wipes having a wetting composition as claimed. Applicants submit that inasmuch as the prior art does not anticipate or render obvious any reference describing a roll of wet wipes having the claimed wetting composition, it cannot be obvious to modify such a roll of wet wipes in accordance with the claimed dimensions.

Regarding the Examiner's inappropriate reliance on Applicants' background as prior art, the Examiner has not responded to Applicants' arguments based on *In re Dow Chemical Co.*, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). The Examiner essentially contends without reference to any authorities that the statements in the instant specification qualify as prior art.

B. To the extent that Claims 81-87, 111-114, 119 and 120 are not obvious under 35 U.S.C. § 103(a) over applicants' acknowledged state of the art in view of US 5,763,332 to Gordon, claims 90-98, 115-118, 121 and 122 are patentable over Nissing

All of the rejected claims require a wet roll comprising a wetting composition as claimed. Since the prior art does not disclose or suggest, individually or in combination, the claimed wetting composition as applied to a wet roll for the above reasons and since Nissing fails to teach or suggest a wet roll comprising a wetting composition according to the present claims, Nissing fails to cure Gordon's deficiencies or render obvious the subject matter in claims 90-98, 115-118, 121 and 122. Accordingly, Applicants respectfully request withdrawal of this rejection.

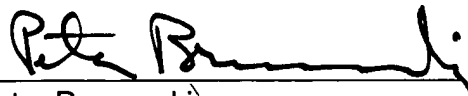
C. Claims 84, 85, 95 and 96 are not obvious under 35 U.S.C. § 103(a) because the prior art fails to teach or suggest each and every element of the rejected claims

Even if the relied upon statements in Applicants' disclosure do qualify as prior art, the prior art fails to account for each and every limitation in the claims individually or in combination. For example, the Examiner has relied on the teaching in the specification of a wet roll of wipes having perforated sheets. However, the Examiner has thus far failed to address or point out any prior art disclosing or suggesting *e.g.*, a roll of wet wipes having at least about 90 perforated sheets as set forth in claims 84 and 95 or a roll of wet wipes having a solid core as set forth in claims 85 and 96.

II. Conclusion

The cited references, either alone or in combination with the Examiner's assertions, do not provide a valid basis for a *prima facie* obviousness rejection of the present claims. Accordingly, Appellants submit that the present invention is fully patentable over the prior art and the Examiner's rejection should be REVERSED.

Respectfully submitted,



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